

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date: **December 10, 2007**

Time: **9am** Place: East Building, Beehive Rm.
South of the cafeteria
(Behind the Capitol)

Members

Commission Members

(Attendees = x)

xChair, Glen W. Roberts, *Utah Cnty* xDavid M. Lattin, *Salt Lake Cnty*
xCanyon W. Anderson, *Davis Cnty* xGarry M. Goodsell, *Iron Cnty*
Jerry M. Houghton, *Tooele Cnty*

Department Staff

xJohn E. "Mickey" Braun, Jr. xPerri Babalis Darrel Powell xMark Kleinfeld
Ass't Commissioner *AG Legal Counsel* *Dir. Market Conduct* *Admin. Law Judge*

xGerri Jones xSheila Curtis xBrad Tibbitts xJilene Whitby
MC Examiner *MC Examiner* *Dir. P&C Division* *PIO/Recorder*

xConnie Nowland xSandra Halladay
MC Examiner *MC Examiner*

Public

David Moore Clayton Hansen Jack Marinello

MINUTES

- I. **Welcome and Introductions** / Glen Roberts, Chair
Glen started the meeting at 9:03a.m.
- II. **Adoption of Minutes of Previous Meeting**
Canyon made a **motion** to approve the minutes, Garry seconded it and the vote was unanimous.
- III. **Review & Concur with Licensee Report**
It was noted that there is now a Rich Land Insurance Company and a Richland insurance agency. Mickey said a licensee must reinstate his or her license if they don't renew within a month of their renewal date. Canyon made a **motion** to concur with the Licensee Report, Garry seconded it and the vote was unanimous.
- IV. **Number of Cases Open & Closed**
Glen noted that the report indicates only seven cases were opened in November. Gerri said some could be in the process of being set up. There are 36 more cases open than closed.
 - **Proposed Procedure to Communicate Closed Cases**
 - o Mickey reported that the department sends a letter to each complainant telling him or her that their complaint has been reviewed and a determination made. The department's concern is that a complaint filed against a licensee can be used against him in the marketplace even when no action is taken against him. Canyon thought this was a good way to encourage agents to police themselves. Mickey said consumer complaints are being handled by P&C consumer service representatives rather than market conduct examiners, i.e., Sheila and Gerri. **A report showing the status of consumer complaints will be developed for the Commission.** Around 98% of complaints come from the industry.

- o Sheila noted it takes 4-8 hours to update the monthly violation report. Mickey said they would put them in date order from the date a file is closed to make it easier to find.
- o Gerri said agencies have been very cooperative during investigations.
- o Canyon asked how serious complaint #54986 was? Gerri said it was an investment club scheme where an individual gave his life's savings to an escrow agent. It has been reported to the Fraud Task Force. A Cease and Desist will be issued. The department meets with the Fraud Task Force at least monthly. Most of their cases start at the department.
- o Garry asked at what point the Commission should confront the issue of the department being understaffed? Mickey has met with ULTA on a bill to help the Commission expedite simple unfair inducement complaints. Mickey noted that the department has four investigators (two are part time) working on title complaints now. This is half of the department's investigative staff. The two are still in training, which will take a few months to get up-to-speed.
- o Mickey said the department was in the process of determining if the discipline assigned to violators is severe enough to change their behavior. Our fines are low compared with other states. The Commission is making the department accountable, forcing them to make changes that hopefully will correct problems in the marketplace. There are no national averages on fines and other disciplinary actions.
- o David made a **motion** to accept the report, Garry seconded it and the vote was unanimous.

V. **Review & Concur with Enforcement Case Report**

Empire Land Title, Inc. is in Provo, license #1847. In September 2006 the respondent acted as a title and escrow agent for a real estate transaction in Orem. The respondent charged the seller the re-issue rate for title insurance when there had been no title work done on the property for over five years. The regular rate should have been charged. There has been no previous action taken against this agency. The department recommended a fine of \$5,000. Sheila did not know what rate was paid. Garry felt the fine was too low because the agency knowingly charged the wrong rate. Canyon made a **motion** to concur with the stipulation. No one seconded it. Garry thought that before the fine was set they needed to know what the agency gained by doing this. David Moore said that 31A-2-308(1) allows, in addition to the penalty, a forfeiture of twice the amount of the profit taken in a violation. Subsection (b)(ii) sets a limit of \$5,000 per violation for the base forfeiture. In this case it could have been \$5,000 plus twice the profit made. David thought the full penalty should be required to make a statement to the industry and because the respondent knowingly violated the law. **Glen asked Mark to see if he could determine what profit was made in this matter.** Canyon thought defining "profit" might be a problem. David Moore said in the past it has been defined as premium. Perri said the stipulation needed to be amended. Garry made a **motion** to reject the stipulation until further information is received, David seconded it and the vote was 3 for the motion and one opposed to it.

VI. **Old Business**

• **Split Closing Bulletin**

- o The question was asked if it was appropriate to write a bulletin on split closings? Mickey said it was but bulletins have no force of law. They are simply informational. The Commission hoped that the bulletin would encourage the use of the form in split closings. The department will draft the bulletin and present it to the Commission at the next meeting.
- o Canyon thought "Transaction" should be defined to include both sides of an escrow as one transaction. He also said an insured closing letter should protect against fraud.

The bulletin should cover cash closings and the definition of "transaction." Mickey said the commission could define it by rule. Perri noted that because this topic is not on the agenda the Commission could not discuss it today. It will be added to January's agenda as, "Transaction definition 31A-23A-406(1)." Glen asked that the department draft a bulletin on split closings. It was noted that in the case of a cash transaction in a split closing, the industry must follow the department's bulletin for now.

- **Review Changes to R590-153, Unfair Inducements and Marketing Practices...**
 - It was noted that a number of changes still needed to be made to the rule. Perri and Mickey were asked to go through the rule and make the necessary changes before the next meeting.
 - Jack said that (5)G gives the impression that all courses must have CE approval. He also thought this subsection should specify how often food is used. Gerri suggested the rule have two sections, one for CE approved courses and the other non-CE approved courses. They should specify whether food may or may not be included.
 - Perri suggested adding "and" at the end of each subsection under (5)G.
 - Does G have anything to do with advertisement? Mickey didn't think it did.
 - Perri said (4)U – should be moved to (5)D?
 - The introductory paragraph of Section (5) does not include the cross-reference.
 - Send comments to Jilene. Next month the rule will be finalized.
- **Draft Rule for Exemption from the 3 year Licensure/Experience Requirement**
Clayton drafted a letter to Mickey with a list of possible exemptions for the license. Canyon will forward names of a couple of attorneys to Clayton to give their input.
- **Discuss the use of CPL & IPL in Title Transactions and Underwriter drafts of CPL**
See above

VII. **New Business**

- 2008 Meeting Schedule discussed.

VIII. **Other Business** from Committee Members

None

IX. **Adjourned:** Garry made a **motion** to adjourn at 10:28 a.m. No objections were made.

X. **Next Meeting:** January 22, 2008, 9a.m., at Backman Title, 167 E. 6100 S., Ste 250.

2008 Meetings

Jan 22, Backman Title	July 16, Beehive Rm
Feb 11, Backman Title	Aug 11, Beehive Rm
Mar 10, Beehive Rm	Sept 8, Beehive Rm
Apr 14, Beehive Rm	Oct 8, Beehive Rm
May 12, Beehive Rm	Nov 10, Beehive Rm
June 9, Beehive Rm	Dec 8, Beehive Rm